SUPERIOR COURT
OF THE
STATE OF DELAWARE

RICHARD F. STOKES
JUDGE

1 THE CIRCLE, SUITE 2
SUSSEX COUNTY COURTHOUSE
GEORGETOWN, DE 19947

March 2, 2010

Craig A. Karsnitz, Esquire
Young, Conaway, Stargatt & Taylor LLP
110 West Pine Street
P.O. Box 594
Georgetown, DE 19947

Mr. James C. Eaton
P.O. Box 267
Lewes, DE 19958

Re: ***Eaton v. Raven Transport, Inc. and Fleet Masters Express***
C.A. No. S09C-01-028- RFS

Dear Mr. Eaton and Mr. Karsnitz:

In this wrongful termination action, I have received Motions for Summary Judgment from both Plaintiff James Eaton ("Mr. Eaton") and Defendant Raven Transport Company ("Raven"). For the reasons explained herein, Mr. Eaton's motion is Denied, and Raven's motion is Granted.

Mr. Eaton was employed as a truck driver by Raven from about January 30, 2007 to March 22, 2007, when he was discharged from his employment. Mr. Eaton alleges that Raven breached his employment contract because he was dispatched with an overweight

load on his truck, resulting in a DOT citation and eventual arrest. He also alleges that he was terminated from his employment without a warning or suspension as required by Raven's Employee Handbook. Mr. Eaton seeks $4.5 million in damages.

When opposing parties file cross motions for summary judgment, neither party's motion will be granted unless no genuine issue of material fact exists and one of the parties is entitled to judgment as a matter of law.[1]

In a related case against a different defendant, Mr. Eaton raised the issue of the alleged overweight load, and the Court granted the defendant's motion to dismiss. For this reason, Raven argues that this case is barred by the doctrine of *res judicata*.[2] The Court finds that there was no privity between the defendant in the earlier case, Nestle Waters North America, and Defendant Raven, and therefore *res judicata* does not apply. Two parties are in privity where "the relationship between two or more persons is such that a judgment involving one of them may justly be conclusive on the other, although those others were not party to the lawsuit."[3] Here, the two defendants' interests are in

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[1] *Emmons v. Hartford Underwriters Ins. Co.*, 697 A.2d 742 (Del. 1997).

[2] *Res judicata* operates to bar a claim where a five-part test is satisfied: (1) the original court had jurisdiction over the subject matter and the parties; (2) the parties to the original action were the same as those parties, or in privity, in the case at bar; (3) the original cause of action or the issues decided was the same as the case at bar; (4) the issues in the prior action must have been decided adversely to the appellants in the case at bar; and (5) the decree in the prior action was a final decree. *Dover Historical Soc., Inc. v. City of Dover Planning Comm'n*, 902 A.2d 1084, 1092 (Del. 2006).

[3] *Zvi Levinhar v. MDG Medical, Inc.*, 2009 WL 4263211 (Del. Ch.).

conflict because Mr. Eaton seeks redress from both defendants for the same actions. The dismissal of the Complaint against Nestle was not conclusive as to Raven, and the doctrine of *res judicata* does not govern the outcome of this case.

Mr. Eaton argues that Raven breached his employment contract because Nestle, the shipper, loaded an overweight amount of cargo on Mr. Eaton's truck, causing him to receive a DOT citation and ultimately be arrested. He also asserts wrongful termination because he did not receive any warning or suspension, as provided in the employee handbook. Having carefully reviewed the record, I find as a matter of law that Mr. Eaton was an at-will employee at the time of his discharge from Raven's employment. The employee handbook is a unilateral statement of company policies and does not grant to any employee a specific term of employment, and therefore does not alter Mr. Eaton's at-will employment status.[4] The handbook itself provides that it is "neither a contract of employment nor a legal document and nothing in the handbook creates an express or implied contract of employment." Furthermore, Mr. Eaton was still within the 90-day orientation period when he was discharged. During this period, the employee handbook provides that an employee "may be terminated at any time." The Court finds that the employment handbook did not establish an employment contract between Raven and Mr. Eaton.

Mr. Eaton also argues that a statement in Raven's Driver Associate Manual

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[4] *Heideck v. Kent General Hospital, Inc.*, 446 A.2d 1095, 1096 (Del. 1982).

constitutes a contractual provision: "No one at Raven, or your assigned driver manager, will ever attempt to dispatch you on an illegal load." Mr. Eaton has not shown or suggested that Raven made such an attempt. This provision of the Driver Manual does not convert Mr. Eaton's status from an at-will employee to a contract worker. Plaintiff has not presented any other evidence of an employment contract, and the Court finds that no such contract existed.

As to the amount of cargo loaded onto Mr. Eaton's truck, Plaintiff concedes that Nestle Waters North America, Inc., the shipper, was responsible for the cargo of bottled water and alleges that Nestle falsified the DOT bill of lading for its own gain. The overweight cargo did not constitute a breach of an employment contract because there was no such contract and also because Mr. Eaton's employer, Raven, did not load the truck and was not responsible for the loading of the truck. On the issue of breach of employment, Mr. Eaton's Motion for Summary Judgment is Denied, and Raven's Motion for Summary Judgment is Granted.

Mr. Eaton also alleges Recklessness Endangerment because Raven's alleged negligence could have caused vehicular manslaughter. He seeks $5.5 million in damages for this claim. Mr. Eaton is not vested with the right to bring a criminal claim.[5] Furthermore, his claim is based on speculation and does not form the basis of a claim for relief. This claim is denied as a matter of law.

For all these reasons, Plaintiff Eaton's Motion for Summary Judgment is

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[5] *In re Tenenbaum,* 918 A.2d 1109, 1119 n. 26 (Del. 2007); *Brett v. Berkowitz*, 706 A.2d 509 (Del. 1998).

DENIED, and Defendant Raven's Motion for Summary Judgment is **GRANTED.**

IT IS SO ORDERED.

Very truly yours,

Richard F. Stokes, Judge

Original to Prothonotary